

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

HAROLD OVERTON,

Plaintiff,

vs.

**NAVAJO EXPRESS, INC. AND
DAVID MATTHEW FADULE,**

Defendants.

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CIVIL ACTION NO. 3:22-01770-L

**DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT
ON PLAINTIFF'S CLAIMS OF GROSS NEGLIGENCE**

TO THE HONORABLE JUDGE OF THIS COURT:

COME NOW, Defendants David Matthew Fadule and Navajo Express, Inc. ("Defendants"), by and through their counsel of record, and file this *Motion for Partial Summary Judgment on Plaintiff's Claims of Gross Negligence* filed pursuant to Rule 56 of the Federal Rules of Civil Procedure. In conjunction with and in support of their Motion, Defendants have filed a Brief in Support and Appendix.

Statement of the Issues

1. Pursuant to Local Civil Rule 56(a), Defendants state that the following issues are to be decided by the Court:

- A. Whether Defendant David Fadule is entitled to summary judgment as to Plaintiff's claim for gross negligence due to Plaintiff's failure to produce sufficient, if any, evidence to support each essential element of the claim;

- B. Whether Defendant Navajo Express, Inc. is entitled to summary judgment as to Plaintiff's claim for gross negligence due to Plaintiff's failure to produce sufficient, if any, evidence to support each essential element of the claim.

Statement of Reasons for Granting Summary Judgment

2. Plaintiff does not have sufficient evidence to support each essential element of the following claims: gross negligence against Defendant David Fadule and/or gross negligence against Defendant Navajo Express, Inc. There is no objective evidence that any action on the part of either Defendant involved an extreme degree of risk considering the probability and magnitude of the potential harm to others. There is no subjective evidence that either Defendant acted with actual awareness of the risk involved but proceeded in conscious indifference to the rights, safety or welfare of others. Furthermore, there is no evidence that Defendant Navajo Express, Inc. authorized or ratified any reckless behavior (the existence of which Defendants deny) on the part of Defendant David Fadule, or that Defendant Navajo Express, Inc., knowingly hired an unfit driver (which Defendants deny) when it hired Defendant David Fadule. Finally, there is no evidence that Defendant Navajo Express, Inc. itself committed any act that constitutes gross negligence, therefore Defendants are entitled to summary judgment on all of the Plaintiff's claims of gross negligence.

CONCLUSION AND PRAYER

Defendants respectfully ask that the Court grant their Motion for Partial Summary Judgment as to the Plaintiff's claims of gross negligence against both Defendant David Matthew Fadule and Defendant Navajo Express, Inc. If summary judgment is not rendered upon the all relief requested, Defendants ask the Court to issue an order specifying the facts that are not genuinely in dispute and granting

such further other and further relief, both at law and in equity, to which the Defendants are justly entitled.

Respectfully submitted,

By: /s/ Michael D. Colvin
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**ATTORNEYS FOR DEFENDANTS
DAVID FADULE AND NAVAJO
EXPRESS, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on November 17 , 2023, a copy of this document was served on all parties and counsel of record via the Court's electronic filing system.

/s/ Michael D. Colvin
Michael Colvin